

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DOROTHY GRACE MARIE
MARAGLINO,

Plaintiff,

v.

J. ESPINOSA, et al.,

Defendants.

1:20-cv-00825-AWI-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED, WITHOUT PREJUDICE, FOR
FAILURE TO OBEY COURT ORDER
(ECF No. 14.)**

**OBJECTIONS, IF ANY, DUE IN FOURTEEN
(14) DAYS**

Dorothy Grace Marie Maraglino (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On June 15, 2020, Plaintiff filed the Complaint commencing this action. (ECF No. 1.)

On September 13, 2021, the court dismissed the Complaint for failure to state a claim, with leave to file an amended complaint within thirty days. (ECF No. 10.) The thirty-day deadline passed and in that time Plaintiff failed to file an amended complaint or otherwise respond to the court’s order. On November 8, 2021, the court issued findings and recommendations, recommending that this case be dismissed for Plaintiff’s failure to comply with the court’s order. (ECF No. 12.) On November 18, 2021, Plaintiff filed objections, arguing

1 that she had nightmares and found it impossible to revisit the details of the events in the
2 Complaint. (ECF No. 13.)

3 On December 1, 2021, the court withdrew the findings and recommendations and granted
4 Plaintiff until January 4, 2022 to file an amended complaint. (ECF No. 14.) Plaintiff was
5 forewarned that if she did not comply with the court's order her case may be dismissed. (Id.)
6 The January 4, 2022 deadline has now expired and Plaintiff has not filed an amended complaint
7 or otherwise responded to the court's order. Therefore, it will be recommended that this case be
8 dismissed for Plaintiff's failure to comply with the court's order.

9 In determining whether to dismiss this action for failure to comply with the directives set
10 forth in its order, "the Court must weigh the following factors: (1) the public's interest in
11 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
12 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
13 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d 639,
14 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

15 "The public's interest in expeditious resolution of litigation always favors dismissal,"
16 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
17 action has been pending since June 15, 2020. Plaintiff's failure to respond to the Court's order
18 may reflect Plaintiff's disinterest in prosecuting this case. In such an instance, the Court cannot
19 continue to expend its scarce resources assisting a litigant who will not comply with the court's
20 orders and litigate her case. Thus, both the first and second factors weigh in favor of dismissal.

21 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in
22 and of itself to warrant dismissal." Id. (citing Yourish at 991). However, "delay inherently
23 increases the risk that witnesses' memories will fade and evidence will become stale," id., and it
24 is Plaintiff's failure to file an amended complaint that is causing delay. Therefore, the third factor
25 weighs in favor of dismissal.

26 As for the availability of lesser sanctions, at this stage in the proceedings there is little
27 available to the Court which would constitute a satisfactory lesser sanction while protecting the
28 Court from further unnecessary expenditure of its scarce resources. Monetary sanctions in this

1 circumstance are of little use, and given the early stage of these proceedings, the preclusion of
2 evidence or witnesses is not available. However, inasmuch as the dismissal being considered in
3 this case is without prejudice, the Court is stopping short of issuing the harshest possible sanction
4 of dismissal with prejudice.

5 Finally, because public policy favors disposition on the merits, this factor will always
6 weigh against dismissal. Id. at 643.

7 Accordingly, based on the foregoing, the Court **HEREBY RECOMMENDS** that:

- 8 1. This action be dismissed, without prejudice, based on Plaintiff's failure to obey
9 the Court's order issued on September 13, 2021; and
- 10 2. The Clerk be directed to close this case.

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
13 **(14) days** after the date of service of these findings and recommendations, Plaintiff may file
14 written objections with the court. Such a document should be captioned "Objections to
15 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
16 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
17 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
18 (9th Cir. 1991)).

19
20 IT IS SO ORDERED.

21 Dated: **January 21, 2022**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE